

**MEMORANDUM**  
**MONROE COUNTY PLANNING DEPARTMENT**

*We strive to be friendly, professional and fair*

**STAFF REPORT**



**TO: THE PLANNING COMMISSION**

**FROM: CLARENCE FEAGIN, Ph.D., AICP, SENIOR PLANNER** CF  
**THROUGH: JOSE PAPA, AICP, COMPREHENSIVE PLANNING MANAGER** JP

**RE: A PUBLIC HEARING TO CONSIDER AN ORDINANCE AMENDING THE MONROE COUNTY CODE BY CREATING SECTION 9.5-491.1, TO PROVIDE FOR PROPORTIONATE FAIR-SHARE MITIGATION OF DEVELOPMENT IMPACTS ON TRANSPORTATION FACILITIES.**

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**MEETING DATE: September 27, 2006**

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**I. BACKGROUND:**

The adoption of this ordinance fulfills a State requirement, in accordance with a 2005 amendment to Florida's growth management legislation which mandates local governments to enact concurrency management ordinances by December 1, 2006, allowing for "proportionate share" contributions from developers to go toward maintaining concurrency requirements (Chapter 163.3180 (16), F.S.). The intent of the proportionate fair-share ordinance is to provide developers an opportunity to proceed under certain conditions, in spite of the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

**A. Characteristics of the Proportionate Fair Share Ordinance.**

- (i) This does not replace impact fees. However, Proportionate fair-share contributions made by a developer shall be applied as a credit against the County's impact fees to the extent that all or a portion of the developers fair share contribution for mitigation is used to address the same capital improvements contemplated in Monroe County's impact fee ordinance. Proportionate Fair Share contributions made by a developer are to mitigate impacts to concurrency, which result when the proposed development degrades level of service standards below the adopted threshold of service.

- (ii) No mitigation or fair share contribution is necessary, if the proposed development does not cause a transportation facility to fall below the adopted level of service standard.
- (iii) Funds collected from fair share contributions that go toward mitigating the impacted transportation facility will be deposited into the accounts that fund the facility in the County's 5 Year Schedule of Capital Improvement Projects (CIP). The transportation facility impacted by development does not need to be identified as having a concurrency problem or in the 5 Year CIP at the time of application. If the transportation facility is not in the current 5 Year Schedule of Capital Improvement Projects, then it will be added to the next year's CIP when the comprehensive plan is amended.
- (iv) The developer's proportionate share of the cost to improve an impacted roadway segment is based on the improvement cost obtained from the 5 year CIP or the FDOT Work Program for that particular road segment.
- (v) A developer's proportionate share of the cost of improving the impacted transportation facility may be in the form of private funds, contributions of land, or the construction and contribution of a transportation facility to the County.

## II. ANALYSIS

### A. County requirements for changes to the land development regulations.

Article XI of Chapter 9.5 sets forth the requirements for amending the text of the land development regulations. Specifically, Sec. 9.5-511(d)(5)b sets forth six (6) criteria for amending the land development regulations, at least one of which must be met. Three (3) of the six (6) criteria support the proposed amendment; (iv) *New Issues* and (v) *Recognition of a need for additional detail and comprehensiveness*.

#### (iv) *New Issues*:

New State legislation was passed in 2005 that mandates local governments to adopt an Ordinance allowing for Proportionate Fair-Share Mitigation of Development Impacts of transportation facilities. Pursuant to Senate Bill 360 as found in Chapter 163.3180(16) Florida Statutes: (a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, FDOT shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options; and (b) In its transportation Concurrency Management System (CMS), a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation.

#### (v) *Recognition of a need for additional detail and comprehensiveness*:

1 The Proportionate Fair-Share Ordinance aids implementation of Monroe County's capital  
2 improvements planning by linking developer contributions, resulting from mitigating  
3 impacts to transportation level of service standards, to transportation projects in the  
4 County's 5 Year Schedule Capital Improvements projects. The Proportionate Fair-Share  
5 ordinance implements concurrency management policies of the Comprehensive Plan by  
6 giving developers the opportunity to satisfy transportation concurrency requirements by  
7 contributing their share of the cost of improving the impacted transportation facility.  
8 Moreover, the Proportionate Fair-Share Ordinance strengthens Monroe County's capital  
9 improvements planning by linking developer contributions to transportation projects  
10 listed in the County's capital improvement plan.

11  
12 **B. Consistency with the 2010 Comprehensive Plan.**

13  
14 The Proportionate Fair-Share Ordinance is consistent with the following policies in the  
15 Monroe County 2010 Comprehensive Plan:

16  
17 **Capital Improvements Element:**

18  
19 **Objective 1401.3**

20 *Monroe County shall ensure that future development pays its proportionate share of the*  
21 *costs of improvements necessary to serve new development at the adopted level of service*  
22 *standards. [9J-5.016(3)(b)4]*

23  
24 **Policy 1401.3.1**

25 *By January 4, 1997, Monroe County shall adopt Land Development Regulations*  
26 *which revise and update the County's current expenditure procedures and*  
27 *proportional fair-share assessment of impact fees, in accordance with the*  
28 *adopted levels of service referenced in Policy 1401.4.1. The revised Land*  
29 *Development Regulations shall also include provisions for the collection of*  
30 *impact fees to offset the public costs of public facilities and services. [9J-*  
31 *5.016(3)(c)8]*

32  
33 **Policy 1401.4.4**

34 *Public facilities and services needed to support development shall be available*  
35 *concurrent with the impacts of development, in accordance with the adopted*  
36 *levels of service referenced in Policy 1401.4.1 and Chapter 9J-5.0055, F.A.C.*  
37 *Development approval may be phased to allow the provision of public facilities*  
38 *and services necessary to maintain the adopted levels of service. [9J-*  
39 *5.016(3)(c)6]*

40  
41 **Policy 1401.4.5**

42 *Monroe County hereby adopts a Concurrency Management System to ensure that*  
43 *facilities and services needed to support development are available concurrent*  
44 *with the impact of development. The Concurrency Management System shall*  
45 *ensure that the County shall issue no development order or permit which results*  
46 *in a reduction in the level of service (LOS) below the adopted LOS standards*  
47 *referenced in Policy 1401.4.1 for those public facilities that are subject to the*  
48 *system. The guidelines established in Policies 1401.4.6, 1401.4.7, 1401.4.8,*

1401.4.9, and 1401.4.10 shall ensure that concurrency is successfully implemented.

**Policy 1401.4.7**

*The following guidelines identify the effect of a concurrency determination.*

1. *A Conditional Concurrency Determination shall indicate that adequate public facilities are available at the time the determination is issued, but shall not guarantee the adequacy or availability of public facilities at subsequent stages of development review.*
2. *A Final Concurrency Determination shall indicate that adequate public facilities will be available at all subsequent stages of development stages of development review, subject to certain limitations such as elapsed time and the payment of fees.*

**Intergovernmental Coordination Element:**

**Policy 1301.3.2**

*Monroe County shall, through its development review process, consider the impacts of proposed developments on the LOS standards of adjacent local governments and the Counties of Dade and Collier. [9J-5.015(3)(c)5]*

**Policy 1301.3.3**

*As part of the planning process, Monroe County shall consider the impacts of projected development on the comprehensive plans of incorporated communities within the County. [9J-5.015(3)(c)7]*

**Policy 1301.3.4**

*By January 4, 1997, Monroe County shall initiate an interlocal agreement with Dade County to evaluate the impact of development on levels of service within one mile of County borders, ensure concurrency and assess impact on existing and proposed land use. [9J-5.015(3)(c)5]*

**C. Public Welfare Issues.**

Whereas the maintenance of transportation facilities are of local, state, and national interest, Monroe County has adopted concurrency management policies to promote the general welfare of its populace by protecting levels of service standards, and ensuring that the impacts of development are concurrent with the availability and capacity of public infrastructure. The Proportionate Fair-Share Mitigation Ordinance implements those policies of the Comprehensive Plan which are designed to preserve transportation levels of service for the welfare of the general public. The ordinance is consistent with the Principles for Guiding Development in the Florida Keys Area of Critical State Concern as a whole and is not inconsistent with any principle. Specifically, the adoption of the Proportionate Fair-Share Mitigation Ordinance furthers:

*Principle (l) To protect the public health, safety, and welfare of the citizens of the Florida Keys and maintain the Florida Keys as a unique Florida resource, and*

1 *Principle (h); To protect the value, efficiency, cost-effectiveness, and amortized life of*  
2 *existing and proposed major public investments, including: 5. Transportation facilities.*

3  
4 **D. Benefits to Property Owners:**

5  
6 The proportionate fair-share ordinance is a pay-as-you-go method to pay for  
7 transportation improvements which will allow for commercial and residential  
8 development projects to proceed, without waiting for capital improvements funding from  
9 traditional sources to alleviate deficiencies in level of service.

10  
11 **III. PROPOSED REVISION:**

12  
13 A text amendment to the Monroe County code to create section 9.5-491.1, to provide for  
14 proportionate fair-share mitigation of development impacts on transportation facilities.

15  
16 **IV. CONCLUSIONS:**

- 17  
18 1. The proposed text amendment is consistent with Section 9.5-511 of the  
19 Monroe County Code.  
20  
21 2. The proposed text amendment is in the interest of public welfare.  
22  
23 3. The proposed text amendment is consistent with and furthers the policies of  
24 the Monroe County Year 2010 Comprehensive Plan.  
25  
26 4. The proposed text amendment is consistent with the Principles for Guiding  
27 Development in the Florida Keys Area of Critical State Concern as a whole,  
28 and is not inconsistent with any principle.  
29

30  
31 **V. RECOMMENDATION:**

32  
33 Staff recommends approval.  
34  
35  
36

1                                   **PLANNING COMMISSION RESOLUTION NO. P40-06**

2                   **A RESOLUTION BY THE MONROE COUNTY PLANNING**  
3                   **COMMISSION RECOMMENDING THAT THE BOCC**  
4                   **AMEND THE MONROE COUNTY CODE BY CREATING A**  
5                   **NEW SECTION 9.5-491.1 PROPORTIONATE FAIR-SHARE**  
6                   **MITIGATION OF DEVELOPMENT IMPACTS ON**  
7                   **TRANSPORTATION FACILITIES**

8   **WHEREAS:** Pursuant to Chapter 163.3181(16)(a)F.S., by December 1, 2006 each local  
9 government is mandated to adopt by ordinance a methodology for assessing proportionate  
10 fair-share mitigation options for impacts on transportation facilities; and

11 **WHEREAS:** The Monroe County Planning Commission finds and determines that  
12 transportation capacity is a commodity that has a value to both the public and private  
13 sectors and that the County's Proportionate Fair-Share Program:

14           1.       Provides a method by which the impacts of development on transportation  
15 facilities can be mitigated by the cooperative efforts of the public and private  
16 sectors; and

17           2.       Allows developers to proceed under certain conditions, notwithstanding  
18 the failure of transportation concurrency, by contributing their proportionate fair-  
19 share of the cost of a transportation facility; and

20           3.       Contributes to the provision of adequate public facilities for future growth  
21 and promotes a strong commitment to comprehensive facilities planning, thereby  
22 reducing the potential for moratoria or unacceptable levels of traffic congestion;  
23 and

24           4.       Maximizes the use of public funds for adequate transportation facilities to  
25 serve future growth, and may, in certain circumstances, allow the County to  
26 expedite transportation improvements by supplementing funds currently allocated  
27 for transportation improvements in the Capital Improvements Element (CIE) of  
28 the Monroe County 2010 Comprehensive Plan; and

29           5.       Is consistent with §163.3180(16), F.S., and supports the following policies  
30 in the Monroe County 2010 Comprehensive Plan: **Intergovernmental**  
31 **Coordination Element** Policies 1301.3.2, 1301.3.3, and 1301.3.4; and **Capital**  
32 **Improvements Element** Objectives and Policies 1401.3, 1401.3.1, 1401.4.4,  
33 1401.4.5, and 1401.4.7; and

34           6.       Is consistent with the Principles for Guiding Development in the Florida  
35 Keys Area of Critical State Concern as a whole, and is not inconsistent with any

1 Principle, and furthers Principle (h); *To protect the value, efficiency, cost-*  
2 *effectiveness, and amortized life of existing and proposed major public*  
3 *investments, including: 5. Transportation facilities.*

4 **NOW THEREFORE BE IT RESOLVED BY THE MONROE COUNTY**  
5 **PLANNING COMMISSION THAT:**

6  
7 **Section 1.** The preceding findings of fact and conclusions of law support its decision to  
8 recommend that the BOCC amend the text of the Monroe County Code by creating  
9 SECTION 9.5-491.1 PROPORTIONATE FAIR-SHARE MITIGATION OF  
10 DEVELOPMENT IMPACTS ON TRANSPORTATION FACILITIES.

11  
12 **Section 2. Text Amendment.** Section 9.5-490.1 of the Monroe County Land  
13 Development Regulations is hereby created to read as follows:

14  
15 Section 9.5-491.1 Proportionate fair-share mitigation of development impacts on  
16 transportation facilities.

17  
18 a. Purpose and Intent:

19  
20 (1) The purpose of this ordinance is to establish a method whereby the  
21 impacts of development on transportation facilities can be mitigated by the  
22 cooperative efforts of the public and private sectors, to be known as the  
23 Proportionate Fair-Share Program, as required by and in a manner consistent with  
24 §163.3180(16), F.S.

25 b. Applicability:

26 (1) The Proportionate Fair-Share Program shall apply to all developments in  
27 Monroe County that have been notified of a lack of capacity to satisfy  
28 transportation concurrency on a transportation facility in the County's Concurrency  
29 Management System (CMS), including transportation facilities maintained by  
30 FDOT or another jurisdiction that are relied upon for concurrency determinations,  
31 pursuant to the requirements of Section e.

32  
33 (2) Proportionate fair-share mitigation shall be applied as a credit against  
34 impact fees to the extent that all or a portion of the proportionate fair-share  
35 mitigation is used to address the same capital infrastructure improvements  
36 contemplated by Monroe County's impact fee ordinance.

37  
38 (3) Proportionate fair-share mitigation includes, without limitation, separately  
39 or collectively, private funds, contributions of land, and construction and  
40 contribution of facilities and may include public funds as determined by the  
41 local government. The fair market value of the proportionate fair-share

mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation.

(4) The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in Chapter 163.3180, F.S., regarding exceptions and de minimis impacts.

#### c. Definitions

The words and phrases used herein shall have the meaning prescribed by the Monroe County Land Development Regulations, except as indicated below:

*Applicant or Developer or Owner* means any individual, corporation, business trust, estate trust, partnership, association, two or more persons have a joint or common interest, governmental agency, or any other legal entity, which has submitted an Application for A Fair Share Agreement and/or who desires to participate in the Fair Share Program.

*Application* means an application presented to the County containing the information required pursuant to this Ordinance.

*BOCC* means the Monroe County Board of County Commissioners.

*Capital Improvements Element (CIE)* means the element of the Comprehensive Plan adopted pursuant to Chapter 163 (Part II), Florida Statutes, which is based on the need for public facilities as identified in the other Comprehensive Plan elements and as defined in the applicable definitions for each type of public facility, which estimates the cost of improvements for which the local government has fiscal responsibility, which analyzes the fiscal capability of the local government to finance and construct improvements, which adopts financial policies to guide the funding of improvements, and which schedules the funding and construction of improvements in a manner necessary to ensure that capital improvements are provided when required based on needs identified in the other adopted Comprehensive Plan elements.

*Concurrency* means that the necessary public facilities and services to maintain the adopted level of service standards are available when the impacts of development occur.

*Concurrency Coordinator* means the Director of the Monroe County Planning and Environmental Resources Department or his or her designee.

*Concurrency Management System (CMS)* means the procedures and/or processes utilized by the County to assure that final development orders and final



1 development permits are not issued unless the necessary public facilities to  
2 support the development are available concurrent with the impacts of  
3 development. The requirements of the Concurrency Management System are  
4 provided for in Policies 1401.4.5, 1401.4.6, 1401.4.7, 1401.4.8, and 1404.9 of the  
5 Capital Improvements Element of the Monroe County 2010 Comprehensive Plan.

6 *County* means Monroe County County, Florida.

7 *Department* is the Monroe County Planning and Environmental Resources  
8 Department.

9 *Deficient Roadway* means a roadway or segment on the Roadway Network which  
10 is within the Traffic Impact Area of a proposed development, which development  
11 (1) would cause the LOS standard for the affected roadway or segment to fall  
12 below the minimum accepted level as determined under the County's  
13 Concurrency Management System, or (2) has an impact on travel or delay time on  
14 an existing Deficient Roadway. Deficient roadways also include roadways  
15 designated as constrained or backlogged.

16 *Future Transportation Map* is the map(s) within the Map Atlas/Document  
17 adopted in the Monroe County Comprehensive Plan, as the same may be amended  
18 from time to time, indicating all freeways, arterial and collector roadways which  
19 will provide for adequate traffic circulation within its planning period.

20 *Impacted Road Segment* means any road segment or link on the Roadway  
21 Network that is wholly or partially within the project's traffic impact area.

22 *Roadway Network* means an interconnected system of freeway, arterial and  
23 collector roads identified by the County in its Comprehensive Plan and  
24 Concurrency Management System for which the Level Of Service standards must  
25 be maintained.

26 *Traffic Impact Area* of a particular development is determined by a traffic study,  
27 in coordination with the County Traffic Engineer, from each of the overall  
28 development's entrance/connections to a roadway external to the development. If  
29 there are no roadways or segments on the Roadway Network within the defined  
30 area, the traffic impact area shall encompass the nearest roadway or link on the  
31 Roadway Network.

32 *Transportation Concurrency* means that the necessary public facilities and  
33 services to maintain the applicable Level of Service standards for road facilities  
34 adopted in Policies 301.1.1 and 301.1.2 of the Monroe County 2010  
35 Comprehensive Plan are available when the impacts of development occur.

#### 36 d. General Requirements

(1) An applicant may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair-share contribution, pursuant to the following requirements:

(a) The proposed development is consistent with the comprehensive plan and applicable land development regulations.

(b) The five-year schedule of capital improvements in the County's Capital Improvements Element (CIE) or the long-term schedule of capital improvements for an adopted long-term CMS includes a transportation improvement(s) that, upon completion, will satisfy the requirements of the County transportation CMS. The provisions of Section d. (2) may apply if a project or projects needed to satisfy concurrency are not presently contained within the local government CIE or an adopted long-term schedule of capital improvements.

(2) The County may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will satisfy the requirements of the County transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:

(a) The County adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate County department(s), and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

(b) If the funds allocated for the five-year schedule of capital improvements in the County CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the County may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system.

(c) The improvement or improvements funded by the proportionate fair-share component must be adopted into the five-year capital improvements schedule of the comprehensive plan or the long-term schedule of capital improvements

1 for an adopted long-term concurrency management system at the next annual  
2 capital improvements element update.

- 3  
4 (3) Any improvement project proposed to meet the developer's fair-share obligation  
5 must meet design standards of the County for locally maintained roadways and  
6 those of the FDOT for the state highway system.

7 e. Intergovernmental Coordination

8 Pursuant to the intergovernmental coordination policies of the County's  
9 Comprehensive plan and relevant policies of the South Florida Regional Planning  
10 Council's Regional Plan for South Florida, the County shall coordinate with affected  
11 jurisdictions, including FDOT, regarding mitigation to impacted facilities not under  
12 the jurisdiction of the local government receiving the application for proportionate  
13 fair-share mitigation. An interlocal agreement may be established with other affected  
14 jurisdictions for this purpose.

15  
16 f. Application Process

- 17  
18 (1) Upon notification of a lack of capacity to satisfy transportation concurrency, the  
19 applicant shall also be notified in writing of the opportunity to satisfy  
20 transportation concurrency through the Proportionate Fair-Share Program  
21 pursuant to the requirements of subsection d.

- 22  
23 (2) Prior to submitting an application for a proportionate fair-share agreement, a pre-  
24 application meeting shall be held to discuss eligibility, application submittal  
25 requirements, potential mitigation options, and related issues. If the impacted  
26 facility is on the Strategic Intermodal System (SIS), then the FDOT will be  
27 notified and invited to participate in the pre-application meeting.

- 28  
29 (3) Eligible applicants shall submit an application to the County that includes, but is  
30 not limited to, an application fee and the following:

- 31 (a) Name, address and phone number of owner(s), developer and agent;  
32 (b) Property location, including parcel identification numbers;  
33 (c) Legal description and survey of property;  
34 (d) Project description, including type, intensity and amount of development;  
35 (e) Phasing schedule, if applicable;  
36 (f) Description of requested proportionate fair-share mitigation method(s); and  
37 (g) Copy of concurrency application.

- 38  
39 (4) The County's Planning Director shall review the application and certify that the  
40 application is sufficient and complete within 10 business days. If an application is

determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program as indicated in Section E, then the applicant will be notified in writing of the reasons for such deficiencies within 10 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The BOCC may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(5) Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to transportation facilities on U.S. 1 requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(6) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the County or the applicant with direction from the County and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on U.S. 1, no later than 60 days from the date at which the applicant received the notification of a sufficient application and no fewer than 14 days prior to the BOCC meeting when the agreement will be considered.

(7) The County shall notify the applicant regarding the date of the BOCC meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the BOCC.

#### g. Determining Proportionate Fair-Share Obligation

(1) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.

(2) A development shall not be required to pay more than its proportionate fair-share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation, pursuant to 163.3180 (16) (c), F.S.

(3) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), F. S., as follows:

The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume

1 (MSV) of roadways resulting from construction of an improvement necessary to  
2 maintain the adopted LOS, multiplied by the construction cost, at the time of  
3 developer payment, of the improvement necessary to maintain the adopted LOS;

4 OR

5 Proportionate Fair-Share =  $\sum \left[ \left( \text{Development Trips}_i \right) / \left( \text{SV Increase}_i \right) \right] \times \text{Cost}_i$  ]

6

7 Where:

8

9 Development Trips<sub>i</sub> = Those trips from the stage or phase of development under  
10 review that are assigned to roadway segment “i” and have  
11 triggered a deficiency per the CMS;

12

13 SV Increase<sub>i</sub> = Service volume increase provided by the eligible  
14 improvement to roadway segment “i” per section E;

15

16 Cost<sub>i</sub> = Adjusted cost of the improvement to segment “i”. Cost  
17 shall include all improvements and associated costs, such  
18 as design, right-of-way acquisition, planning, engineering,  
19 inspection, and physical development costs directly  
20 associated with construction at the anticipated cost in the  
21 year it will be incurred.

22 (4) For the purposes of determining proportionate fair-share obligations, the County  
23 shall determine improvement costs based upon the actual cost of the improvement  
24 as obtained from the CIE or the FDOT Work Program. Where such information  
25 is not available, improvement cost shall be determined using one of the following  
26 methods:

27 (a) An analysis by the County of costs by cross section type that incorporates data  
28 from recent projects and is updated and approved by the BOCC. In order to  
29 accommodate increases in construction material costs, project costs shall be  
30 adjusted by an inflation factor; or

31 (b) The most recent issue of FDOT Transportation Costs, as adjusted based upon  
32 the type of cross-section (urban or rural); locally available data from recent  
33 projects on acquisition, drainage and utility costs; and significant changes in  
34 the cost of materials due to unforeseeable events. Cost estimates for state road  
35 improvements not included in the adopted FDOT Work Program shall be  
36 determined using this method in coordination with the FDOT District.

37 (5) If the County has accepted an improvement project proposed by the applicant,  
38 then the value of the improvement shall be determined using one of the methods  
39 provided in this section.

(6) If the County has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 120 percent (120%) of the most recent assessed value by the Monroe County property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the County and at no expense to the County. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the County at no expense to the County. If the estimated value of the right-of-way dedication proposed by the applicant is less than the County estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

#### h. Impact Fee Credit for Proportionate Fair-Share Mitigation

(1) Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance.

(2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the Proportionate Fair-Share Agreement as they become due per the County Impact Fee Ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the County pursuant to the requirements of the County impact fee ordinance.

(3) Major projects not included within the local government's impact fee ordinance or created under Section d. (2) (a) and (b) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the local government's discretion for impact fee credits.

(4) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the local impact fee ordinance.

#### i. Proportionate Fair-Share Agreements

- (1) Upon execution of a proportionate fair-share agreement the applicant shall receive a County certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months or timeframe provided in the local CMS of the execution of the Agreement, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.
- (2) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be non-refundable. If the payment is submitted more than 12 months from the date of execution of the Agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to subsection g and adjusted accordingly.
- (3) All developer improvements authorized under this ordinance must be completed prior to issuance of a development permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of building permits or certificates of occupancy.
- (4) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.
- (5) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
- (6) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the County will be non refundable.
- (7) The County may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

j. Appropriation of Fair-Share Revenues

- (1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the County CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate

1 fair-share revenues may also be used as the 50% local match for funding under  
2 the FDOT TRIP.

3 (2) In the event a scheduled facility improvement is removed from the CIE, then the  
4 revenues collected for its construction may be applied toward the construction of  
5 another improvement within that same corridor or sector that would mitigate the  
6 impacts of development pursuant to the requirements of Subsection d (2)(b).

7 Where an impacted regional facility has been designated as a regionally  
8 significant transportation facility in an adopted regional transportation plan as  
9 provided in Section 339.155, F.S., and then the County may coordinate with other  
10 impacted jurisdictions and agencies to apply proportionate fair-share contributions  
11 and public contributions to seek funding for improving the impacted regional  
12 facility under the FDOT TRIP. Such coordination shall be ratified by the County  
13 through an interlocal agreement that establishes a procedure for earmarking of the  
14 developer contributions for this purpose.

15 (3) Where an applicant constructs a transportation facility that exceeds the applicant's  
16 proportionate fair-share obligation calculated under Section g, the County shall  
17 reimburse the applicant for the excess contribution using one or more of the  
18 following methods:

19 (a) An impact fee credit account may be established for the applicant in the  
20 amount of the excess contribution, a portion or all of which may be assigned  
21 and reassigned under the terms and conditions acceptable to the County.

22 (b) An account may be established for the applicant for the purpose of  
23 reimbursing the applicant for the excess contribution with proportionate fair-  
24 share payments from future applicants on the facility.

25 (c) The County may compensate the applicant for the excess contribution through  
26 payment or some combination of means acceptable to the County and the  
27 applicant.

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#### 29 k. Cross Jurisdictional Impacts

30 (1) In the interest of intergovernmental coordination and to reflect the shared  
31 responsibilities for managing development and concurrency, the County may  
32 enter an agreement with one or more adjacent local governments to address cross  
33 jurisdictional impacts of development on regional transportation facilities. The  
34 agreement shall provide for application of the methodology in this section to  
35 address the cross jurisdictional transportation impacts of development.

36 (2) A development application submitted to the County subject to a transportation  
37 concurrency determination meeting all of the following criteria shall be subject to  
38 this section:



- 1 (a) All or part of the proposed development is located within a segment of the  
2 Traffic Impact Area which is under the jurisdiction, for transportation  
3 concurrency, of an adjacent local government; and
- 4 (b) Using its own concurrency analysis procedures, the County concludes that the  
5 additional traffic from the proposed development would use five percent (5%)  
6 or more of the reserve speed of a regional transportation facility within the  
7 concurrency jurisdiction of the adjacent local government “impacted regional  
8 facility”; and
- 9 (c) The impacted regional facility is projected to be operating below the level of  
10 service standard, adopted by the adjacent local government, when the traffic  
11 from the proposed development is included.
- 12 (3) Upon identification of an impacted regional facility pursuant to subsection k  
13 (2)(a)-(c), the County shall notify the applicant and the affected adjacent local  
14 government in writing of the opportunity to derive an additional proportionate  
15 fair-share contribution, based on the projected impacts of the proposed  
16 development on the impacted adjacent facility.
- 17 (a) The adjacent local government shall have up to ninety (90) days in which to  
18 notify the County of a proposed specific proportionate fair-share obligation,  
19 and the intended use of the funds when received. The adjacent local  
20 government must provide reasonable justification that both the amount of the  
21 payment and its intended use comply with the requirements of Section  
22 163.3180(16), F.S. Should the adjacent local government decline  
23 proportionate fair-share mitigation under this section, then the provisions of  
24 this section would not apply and the applicant would be subject only to the  
25 proportionate fair share requirements of the County.
- 26 (b) If the subject application is subsequently approved by the County, the  
27 approval shall include a condition that the applicant provides, prior to the  
28 issuance of any building permit covered by that application, evidence that the  
29 proportionate fair-share obligation to the adjacent local government has been  
30 satisfied. The County may require the adjacent local government to declare,  
31 in a resolution, ordinance, or equivalent document, its intent for the use of the  
32 concurrency funds to be paid by the applicant.

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4 **PASSED AND RECOMMENDED FOR ADOPTION** by the Monroe County Planning  
5 Commission at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2005.  
6

7 James D. Cameron, Chair  
8 Randolph D. Wall, Vice Chair  
9 Michelle Cates Deal, Commissioner  
10 Sherry Popham, Commissioner  
11 Donna Windle, Commissioner  
12

13  
14 PLANNING COMMISSION OF MONROE COUNTY,  
15 FLORIDA  
16

17 By \_\_\_\_\_  
18 James D. Cameron, Chair  
19

20  
21 Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.  
22